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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 19 OF 2005
IN
COMPANY PETITION NO. 2 OF 2002

Vardhaman Dye-Stuff Industries Pvt. Ltd. & Ors. ...Appellants. Org. Respondents.

Vs

M.R.Shah ...Respondent. Org. Petitioner.

Mr. D.D.Madon, Sr.Counsel a/w. Mr. Zubin Kamdin i/by M/s. Mulla and Mulla for the appellants.

Mr. Vishwajeet Sawant for the respondent.

CORAM : ANOOP V.MOHTA, J.

DATED : 31st August, 2007.

JUDGMENT:-

1. The appellants, (Original respondent) being dissatisfied by the impugned order dated 17th January, 2005 passed by the Company Law Board, Principal Bench, New Delhi (for short, "CLB"), have preferred present appeal under Section 10(f) of the Companies Act-1956 (for short," Companies Act").

2. In the year 2000-2001 the respondent raises certain disputes with the appellants. In the month of December, 2001, the respondent files a petition No.2 of 2002 under Sections 397 and 398 of the Companies Act, 1956 before the Company Law Board, New Delhi against the Appellants.

3. On 27/01/2005, by the impugned order the CLB though holds that no case of oppression has been made out by the Respondent, yet directed the Appellants to purchase the shares of the respondent. Hence the appeal.

4. The relevant conclusion as arrived at by the CLB is as under:-

"36. I find that the petitioner has been indulging in forum shopping and she was aware of everything happening in the company till the dispute arose after March, 2000. Now when the relationship in the two groups have soured, the petitioner has raised various issues of action/inaction on the part of respondents alleging that the affairs of the respondent company are being conducted in a manner oppressive to the petitioner. The petitioner was a party to all these

decisions and operating through her husband. She cannot turn back at a later stage to invoke equitable jurisdiction on the basis of certain decisions taken by the respondent company. Although some of these decision like transferring of Rs.20 lakhs to the personal account of a particular director for two days, diversion of companies export business through another company of the respondent directors for saving sales tax etc. as well as selling the flat which had not been released out of the collateral security, are some of the actions which are apparently wrong on the part of the respondent company. The concerned authorities like Registrar of Companies would take note of these omissions and not adhering to the provisions of the Companies Act and take suitable action against the company. However, no case of oppression to the petitioner is made out by merely some wrongful actions taken by respondent company as mentioned above.

37. In view of the above discussions, the petition is disposed of with the following directions that in order to end the dispute, the petitioner should be given liberty to sell his shares and go out of the company on return of his investment in shares, as she

feels oppressed by the majority share holders. in case the petitioner is willing to part with her shares, the shares will be bought by the respondent at the fair price to be fixed by a valuer to be appointed by this Board. The valuation will be based on the balance sheet of the respondent company as on 31/03/2001. In case the petitioner desires to go out of the company, then on an application made by her, a suitable valuer will be appointed by this Board in consultation with both the parties."

5. The learned counsel appearing for the appellant has relied on the following cases:-

1. **Hanuman Prasad Bagri and ors. Vs. Bagree Cereals Pvt. Ltd. and ors. (2001) 2 Comp. LJ 392 (SC).**
2. **Jaladhar Chakraborty and ors. Vs. Power Tools and Appliances Co. Ltd. & Ors. 1994 Company Cases, (Vol.79), (Cal) 505.**

6. The learned counsel appearing for the respondent has relied on the following cases:-

1. **The Hindustan Construction Co. Ltd. Vs. G.K. Patankar and anr. AIR 1976 S.C. 907.**

2. **Caparo India Ltd. (U.K.) and ors. Vs. Caparo Maruti Ltd. & Ors. (2006) 72 CLA 99 (Del.)**

3. **Delstar Commercial and Financial Ltd. & ors. Vs. Sarvottam Vinijaya Ltd. & Ors. (2003) Company Cases, (Vol. 113), 642.**

4. **Needle Industries (India) Ltd. & ors. Vs. Needle Industries Newey (India) Holdings Ltd. & ors. AIR 1981 Supreme Court, 1298.**

5. **Sangramsinh P. Gaekwad & ors. Vs. Shantadevi P. Gaekwad (D) through LRs & ors., (2005) 3 Comp. LJ 385 (SC).**

6. **Jyotsna Nalinikant Kilachand & ors. Vs. Nandlal Kilachand Investment Pvt. Ltd. & ors., 1993(3) Bom.C.R., 512.**

7. The undisputed position is that, respondent (original petitioner) is holding 28% shares in appellant company (original respondent No.1). Respondent (original petitioner) has filed petition under Section 397/398 of the Companies Act, complaining oppression on minority share holder and mismanagement of appellant company, perpetrated by the Managing Director and Directors of the appellant company.

8. The company was incorporated in the year 1992. The company has its factory at M.I.D.C., Tarapur, Maharashtra. In 1997 the paid up share capital of the company was raised to Rs.34.0 lacs. Appellant company

has availed 3 term loans of about Rs.90 lacs in total in 1994, 1996 and 1997 from the Maharashtra State Financial Corporation (for short,"M.S.F.C.") against the factory plant and machinery. The respondent's (original petitioner's) husband Mr. Rajesh Shah had qualified Chartered Accountant often advise in basic financial matters to the appellant company. All directors of the company and Mr. Rajesh Shah, the husband of the respondent, had given their personal guarantee for repayment of the loans. The respondent however, moved the petition on allegation of siphoning and misusing funds by the appellant company after March, 2000.

9. After considering the material placed on record and written submissions filed by the parties, the CLB has dealt with all the aspects which culminated by answering four major issues, viz.; "breach of collateral security given to M.S.F.C.", "alleged misappropriation of Sale price of DEPB licenses", "diversion of company business to M/s. Vardhaman Impex Pvt. Ltd.", and "allegation of unsecured loans and advances".

10. The undisputed position on record as rightly

observed by the CLB that till May 2001 the respondent and her husband were fully aware of the affairs of the company. The respondent's husband in his capacity as a Chartered Accountant at the relevant time was fully aware all the financial aspects of the Company. He represented in various group of companies on tax and financial matters including Income Tax authorities. The respondent, therefore, based on the allegation of siphoning of fund and or mismanagement, moved this application inspite of the facts that the respondent and her husband were aware of all the basic financial transaction including of breach of collateral security, alleged misappropriation of sale price, and/or diversion of company business to M/s. Vardhaman Impex Pvt. Ltd. and even of unsecured loan and advances. The CLB after considering the material placed on record, apart from above facts come to a clear conclusion that some instances here or there that cannot be the reason to pass or grant any relief as prayed in such application.

11. The paragraphs quoted above further reflects that all the conclusions arrived at by the CLB by observing specifically that no case of oppression to the respondent was made out by merely some wrongful

actions taken by the appellant company as mentioned above.

12. In the present facts and circumstance of the case, therefore, having once come to the conclusion that there is no case made out by the respondent of oppression and even otherwise as the respondent as well as her husband who was acting at the relevant time, as a Chartered Accountant, were fully aware of all the transactions and in fact participated in all such transactions, cannot agitate the same foundation for the relief as prayed in the petition. The operative part therefore, in view of the above facts and reasoning is contrary to the provisions of Sections 397 and 398 of the Companies Act. The appellant, therefore, has made out her case to interfere in view of the directions as given by the CLB.

13. The directions compelling the company to purchase the shares of the respondent/petitioner, in the facts and circumstances of the case, is abuse of the process of the CLB. Such directions is, therefore, contrary to the law and impermissible.

14. The submission based upon **Sangramsinh (Supra)** that," in a given case, the Court despite holding that no case of oppression has been made out may grant such relief so as to do a substantial justice between the parties." As noted above, in the present case, there is no case made out to grant such relief in favour of the respondent. There is no case of oppression or mismanagement, made out in the facts and circumstances of the case and even otherwise insufficient justification to pass such impugned order/ directions and therefore being perverse, unsustainable.

15. The another Judgment which has been strongly relied by the learned counsel appearing for the respondent is **Caparo India Ltd. (supra),** where in para 36, the Delhi High Court has observed as under:-

> "(a) Before any direction can be given or relief can be granted under section 397 of the Act, the petitioner has to prove the acts of oppression and that too of a nature which would normally make out a case of winding up of the company under just and equitable clause. However, winding up is not resorted to as it would prejudicially affect the interest of the petitioner and therefore, recourse to section 397 of the Act. If case of this nature is not made out then directions under section 397 cannot be issued.

(b) Normally, the petitions are filed invoking provisions of the sections 397/398 of the Act and in such petitions duty of the court is to see the distinction between the two provisions and examine the position, i.e., to see as to whether a particular allegation is oppression under section 397 or of the mismanagement under section 398.

(c) Even if case under section 397 is not made out and the allegations are such as which would bring the case under section 398, appropriate directions under section 398 read with section 402 can be issued.

(d) Even if a case of oppression is not made out, in exercise of its equitable jurisdiction, the court can grant relief and pass the necessary orders. This would normally be in those cases where two sets of shareholders cannot do business together and have been fighting litigation for years and there is lack of probity amongst the parties and the court is of the opinion that a permanent solution has to be found."

16. As noted above, I am of the opinion that, there is no case made out by the respondent to exercise any equitable jurisdiction to grant such relief. This is not the case where the parties were fighting litigation for the years. On the contrary, in this case at the relevant time, the petitioner who was fully aware all the transactions and affairs of the company, as her husband was a Chartered Accountant of the company, who in fact dealt with all alleged basic financial matters of the company cannot claim the

equity or such reliefs. There is no case of oppression and mismanagement or winding up of the company on any unjust or equitable ground to bring the case under any of Section 397 or 398 and or even 402 of the Companies Act. The above cases as relied by the learned counsel appearing for the respondent are distinct and distinguishable on facts itself. In view of the above reasoning, the **Hindustan Constructions Co. Ltd. (supra)** as relied by the learned counsel appearing for the respondent is also of no assistance.

17. The Supreme Court Judgment which has been relied by both the parties in **Needle Industries (India) Ltd. (Supra)** referring to the principle of oppression and mismanagement of surrounding Section 397, 398 and 402 is not in dispute, in no way assist the respondent and on the contrary it supports the appellant in all respects and as there is no case of oppression or mismanagement and or winding up order.

18. The apex Court judgment relied by the learned counsel appearing for the appellant in **Hanuman Prasad (supra)** squarely covers the submissions as raised that "if the facts fall short of the case set out for winding up on just and equitable grounds, no relief

can be granted to the petitioners". Further **Jaldhar Chakraborty (Supra)** also supports the case of the appellant specially the observation in the following para:-

. "The last question to be decided in this matter is whether the court can compel the company or the respondents to purchase the shares of the petitioner. As noted above the petitioners are willing to sell their shares in the company at market value. The offer is not acceptable to the company or the respondents. In my view having held that there was no ground of oppression or mismanagement, there is no question of the court passing any order for bringing to an end any matter complained of either under section 397 or 398. The substratum for passing any order under section 397 or 398 is not available. As observed by Buckley L.J., in Jermyn Street Turkish Baths Ltd., In re (1971)4) Comp. Cas 999, 12025 (1971) 3 All ER 184 (at page 201)."

19. In view of the above, the submission that the High Court may not disturb the impugned order passed by the Company Law Board as Section 10-F refers to an appeal only on a question of law, is not correct. The

Apex Court in **Dale & Carrington Invt. (P) Ltd. and Anr. Vs. P.K.Prathapan and ors. (2005) 1 S.C.C. page 212** has observed as under:-

> . "Section 10-F refers to an appeal being filed on a question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of fact arrived at by the Company Law Board. It was further argued that the High Court has recorded its own finding on certain issues which the High Court could not go into and, therefore, the judgment of the High Court is liable to be set aside. We do not agree with the submission made by the learned counsel for the appellants. It is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only on the question of law. The perversity of the finding itself becomes a question of law."

20. Therefore, in view of the above reasoning, in the facts and circumstances of the case and as already observed the impugned order and specially the operative part is perverse and unsustainable.

21. Resultantly, the appeal is allowed. The impugned order dated 17th January, 2005 is quashed and set aside.

22. No costs.

(ANOOP V.MOHTA, J.)